

ICHLA Tax Issues Committee
9/29/06

Attendees:

ICHLA Commissioner Claudia Ontiveros-Fuentes, IEDC
Joe VanDevender, IDOR
Greg Carney, Liberty Tax Services
Laura Barrett, ICHLA Staff

Minutes:

Commissioner Ontiveros thanked everyone for attending the meeting. She then mentioned previous concerns shared by Veronica Guerrero in regards to the incompetence of H&R Block offices pertaining to ITIN numbers and lack of quality service for the Hispanic/Latino community.

Commissioner Ontiveros also mentioned another concern generated by Veronica Guerrero in regards to people within or outside of the Hispanic/Latino community charging those who are undocumented \$25 for obtaining an ITIN number. Commissioner Fuentes stated these undocumented persons are being taken advantage of due to this unnecessary charge.

Mr. Carney stated that Liberty Tax Service does not charge for obtaining ITIN numbers and they also fill W-7s for free. In addition, Mr. Carney has seen other companies and persons charge \$25-\$200 for filling out W-7 forms.

Commissioner Fuentes asked if the W-7 is a simple form to fill out.

Mr. Carney stated that it is simple, but two items need to be accomplished: copy of all of an individual's identification with the exception of the birth certificate, and then one must have all of the identification notarized (certified copy) unless the tax preparer is an IRS acceptance agent. The IRS just renewed this acceptance agent program. Mr. Carney also mentioned that many tax preparers are not acceptance agents; therefore, they sometimes make the mistake of sending original documents to the IRS instead of copies. In addition, a time element is involved regarding how the tax preparer must make sure that the copies in which people bring into the tax preparer's business meet the IRS acceptance list of copies.

Mr. VanDevender stated that this is an IRS issue.

Commissioner Fuentes stated that Veronica Guerrero mentioned there is confusion for those workers who are sub-contractors and the problems they confront when filling out the 1099 form.

Mr. Carney stated that the sole purpose of an ITIN number is to file taxes. It does not allow one to obtain work.

Mr. VanDevender stated that if you go beyond filing personal taxes, such as a business owner, one must obtain a federal tax ID number.

Mr. Carney stated that an employee with an ITIN number allows that person to file taxes, but if that employee has a 1099 (independent contractor) then this form would require a Schedule C.

Mr. VanDevender stated that many employers will require Hispanic employees to become independent contractors in order to pay these individuals cash while maintaining the least amount of personal information. The term independent contractor signifies that the one must carry the burden of paying self-employment tax, which is equivalent to Social Security tax, due to how the employer does not withhold Social Security and other taxes taken out of a normal paycheck. Therefore, many Hispanics who are independent contractors are paying twice the amount of Social Security tax, whereas, if they were classified as general employees, this Social Security tax would be withheld.

Mr. VanDevender noted that many of these Hispanic independent contractors are unfamiliar with the 1099 independent contractor form and the Schedule C that accompanies it. Therefore, with the unfamiliarity of the 1099 form, many tax preparers take advantage of these independent contractors by charging an exuberant amount of money.

Mr. Carney stated that the biggest problem that he has seen has not been the ITIN or W-7s, but has been the communication to the Hispanic community that they need to file taxes. Mr. Carney mentioned that many tax preparing agencies do a poor job in providing a meaningful message in trying to convince Hispanics to file their taxes. Mr. Carney talked about advertisements that depict insignificant information to the Hispanic community, such as receiving your tax refund in a shorter time frame. In addition, Mr. Carney stated that April 15th, (last day to file taxes) does not mean anything to the Hispanic community.

Mr. Carney mentioned a situation in which he encountered when processing an ITIN for a Hispanic individual. Mr. Carney stated that he completed the ITIN paperwork and it was approved by the IRS. Mr. Carney explained that the following day he had received a letter by the individual's employer demanding a verification of their Social Security Number. Mr. Carney thought the timing between this letter and the ITIN paperwork was somewhat odd due to how the IRS and Immigration do not communicate to one another about who (undocumented) is filing for ITINs.

Commissioner Fuentes referred to last meeting's minutes and how Veronica Guerrero would like to see front office clerks for the DOR to be more culturally competent and understanding of those who file for ITINs.

Mr. VanDevender stated that the DOR has been addressing this issue and he feels confident that the DOR will make great strides in processing and training their front office clerks in handling ITINs.

Mr. VanDevender stated that it is easier for him to receive emails when problems occur regarding ITINs. Therefore, he will be able to contact the right people in his Department in order to handle a certain problem.

Laura Barrett stated that the Commission has encountered inquiries regarding the ability to acquire ITINs during the last year's forums, but rarely receives calls.

Commissioner Fuentes mentioned the main goal of this Committee is to document, research and identify ITIN and other tax issues affecting the Hispanic community. Furthermore, a report will be submitted to the Governor and the State Legislature entailing recommendations that will address the ITIN problems.

Commissioner Fuentes referred to the Liberty Tax Service article which was inserted in the meeting packet.

Mr. Carney explained that Liberty Tax Service representatives will be receiving new information next week on how this organization will address ITINs and other tax issues confronting undocumented persons for the up and coming tax season.

Mr. Carney stated that a representative from Liberty Tax Service (Blair) created a training program for all of Liberty Tax Service representatives regarding how to handle ITINs for undocumented persons and how to serve the Hispanic community in a competent manner. Mr. Carney also mentioned that Blair had put together a CD which entails bi-lingual information catered to the Hispanic community in the form of a question and answer format: Why do you need an ITIN, Why is filing taxes important, Will you encounter problems if you apply for an ITIN, etc. (Blair is no longer employed for Liberty Tax Service.)

Mr. Carney stated that his franchise bought 100 of Blair's CDs and passed them out into the Hispanic community. Mr. Carney mentioned that the main focus of the CDs was to educate the community. In addition, Mr. Carney explained that his office does have bi-lingual and well-trained representatives. Furthermore, Mr. Carney stated that Liberty Tax Service does not charge for ITINs.

Mr. Carney feels that the real focus when processing an ITIN for an undocumented individual is the concept of processing back years. Mr. Carney feels that many undocumented persons who have been living here for some time and have not filed taxes will remain fearful of the amnesty program (back years) due to how this program poses the question: Have you previously filed taxes? Mr. Carney stated that a large fear still exists in the undocumented community regarding the possibility of Immigration and Naturalization Services finding out from the IRS who is filing for ITINs.

Mr. Carney presented another example of individuals coming into his office with a W-2, which has a Social Security Number on it. At the same time these individuals are filing their W-2, they are asking to acquire an ITIN number. Mr. Carney stated that the W-2 filing must be a paper filing and not an electronic one, due to how the number on the W-2 does not match the Social Security number or ITIN number. Mr. Carney mentioned that if they filed their W-2 someplace else last year, then the possibility of an electronic filing was very high which they would be receiving a refund very quickly. Mr. Carney stated that the proper manner (according to law) to file a W-2 for an individual whose numbers (Social Security or ITIN) do not match is to mail the paperwork to the IRS instead of electronically filing.

Mr. Carney mentioned that the IRS will look to the firm who improperly filed W-2s rather than the individual requesting an ITIN and filing a W-2 at the same time. However, Mr. Carney stated that the IRS does have the ability to audit those firms who improperly file taxes, which could lead to personal audits of the firm's clients.

Commissioner Fuentes reiterated Veronica Guerrero's comment regarding the importance for all undocumented persons to use a consistent and an appropriate number when filing taxes. This procedure will enable an undocumented person to create a history with the IRS which may enable them to experience a friendly and simple process when applying for residence due to an accredited tax history and start date.

Mr. Carney stated that this is the type of information that needs to be disseminated to the community (creating a history with the IRS).

Laura Barrett questioned how undocumented individuals claim dependents.

Mr. Carney stated that there are many situations where there are large families living together. Therefore, there is an issue on how many dependents one can claim. Mr. Carney mentioned that one can claim a relative living in Mexico if the tax payer is providing support for that person. However, the claimed dependent must have an ITIN number (Must be a resident of U.S., Canada or Mexico).

Mr. VanDevender stated that he will ask someone in his Department to research the issues which DOR encounters regarding ITINs. In addition, Mr. VanDevender stated that DOR's computers do have some issues when processing ITINs. Mr. VanDevender stressed the importance of acquiring someone from the IRS, Carol Dale, to attend the Committee's meetings. Ms. Dale is the liaison between the DOR and the IRS.

Mr. VanDevender stated that last meeting's minutes do entail good suggestions that should be implemented.

Laura Barrett stated that individuals should know the consequences of claiming dependents on their tax return.

Mr. VanDevender stated that if his Department receives a tax return with too many dependents, DOR will suspend the tax return. The IRS will perform the same function if too many dependents are claimed.

Mr. Carney stated that many undocumented Hispanics are not familiar with the process of U.S. tax law. Mr. Carney stated that in many other countries, citizens do not have to file a tax return. The Hispanic community is not used to tax refunds. Mr. Carney stated that many Hispanics will file a W-2 and claim exempt, so there is no withholding, or claim a high number of dependents, so there is very little withholding. Therefore, when they receive a tax return, these individuals will owe money to the IRS or DOR. This problem is due to the common misunderstanding among the Hispanic community.

Mr. Carney stated that a substantial amount of Hispanic individuals (undocumented) who filed taxes last year did receive tax refunds. Mr. Carney stated that if an individual files an I-9, one must have a separate ID number along with your Social Security Number.

Mr. VanDevender stated that we must take away the fear that exists in the Hispanic community. This fear results from the myth that when undocumented workers file their taxes or acquire an ITIN, they will be reported to INS and then be deported.

Commissioner Fuentes mentioned that the fear exists in the new immigrant community. Commissioner Fuentes stated that we need to research the issues that affect the new immigrant community and also those Hispanic individuals who are residents of the state.

Laura Barrett also mentioned that when an individual applies for an ITIN, that individual must provide a mailing address. This creates additional fear that the IRS will know where an undocumented individual resides.

Mr. VanDevender stated that if these undocumented persons do not start paying taxes, the consequences will be felt in immigration legislation drafted by Congress in the near term. Mr. VanDevender also mentioned that if the majority of Hispanic immigrants pay taxes, many arguments would be resolved.

Commissioner Fuentes was wondering if it were true that the Social Security Administration collects money from those undocumented individuals whose Social Security is withheld due to the inability to match names with Social Security Numbers.

Mr. Carney stated that this may be true. He also mentioned that there have been many instances that undocumented individuals use false Social Security Numbers to work, therefore, the Social Security Administration cannot match those false numbers to individuals.

Mr. Carney stated that both employers and employees pay Medicare and Social Security tax.

Mr. VanDevender stated that even though undocumented individuals who use false Social Security Numbers when filing a W-2 and also turn in an exemption certificate claiming 10 dependents will likely not have to pay federal tax. Therefore, once the Social Security Administration receives the portion of their tax, they will not be able to match the false number with the individual's name.

Mr. Carney stated that the federal government uses the extra money gained from undocumented individuals (who use false SSN) Social Security benefits as a loan to support the deficit.

Commissioner Fuentes stated that tax education is the main focus that the Committee needs to address to the Hispanic community.

Mr. VanDevender stated that the Committee should be in contact with Kathy Klinkose and Stephanie McFarland from DOR in developing a press release that will address filling those needed bi-lingual vacancies in DOR.

Commissioner Fuentes stated that the report will address recommendations that the Governor and State Legislature should know and possibly implement.

Mr. VanDevender stated that the DOR only has one Spanish speaking person in the front office (tax payer services).

Commissioner Fuentes stated that it may be a possibility to post this job description on the Commission's webpage.

Commissioner Fuentes stated that the Department of Administration (Minority and Women Business Enterprise) presented before the Commission on 9/27/06 and their presentation consisted of data that shows a low number of certified Hispanic businesses registered with the State.

Mr. Carney mentioned an issue regarding tax preparer's preparation of ITINs and the tax returns for ITINs. Mr. Carney believes that those tax preparers handling ITIN cases need to be better educated and possibly be certified. In addition, Mr. Carney stated that the federal government will possibly implement a required program or exam that many tax preparers must take in order to become a PA. Mr. Carney stated that there are many people who do not know how to handle filing taxes, especially ITINs. Therefore, in order to insure fairness to the client and the community, it would behoove the government to implement an exam to become a tax preparer.

Mr. VanDevender suggested that the Commission should contact those organizations that advocate for tax preparers, such as the Enrolled Tax Preparer Society.

Mr. VanDevender mentioned that we need to understand the different generational attitudes regarding filing taxes. Those attitudes from first generation immigrants do differ from second and third generation children.

Mr. Carney stated that the Patriot Act has and will continue to create issues with obtaining a Social Security Number or bank account for those undocumented individuals.

Mr. VanDevender suggested that we should consult last meeting's minutes and create a list of events that the Committee should address and try to complete.

Commissioner Fuentes stated that Amy Mendoza would like to talk with other State Hispanic Commissions and see if other Commissions have implemented a program that addresses Hispanic tax issues.

Commissioner Fuentes stated that the Committee will form an outline for the report.

Mr. VanDevender stated that he will be open to help anytime regarding the creation of the report.

Laura Barrett also mentioned how other Committee's have been addressing 3 main focus areas. Therefore, does this Committee have any main areas to focus on.

Commissioner Fuentes stated that education and the ITIN are two main areas to focus on.

Mr. VanDevender stated that it would be logical to pinpoint those organizations that offer friendly tax preparing services, especially those that offer free ITIN filings, and then promote this to the Hispanic community.

Commissioner Fuentes stated that the Commission always looks for partnerships in order to leverage resources and time.

Mr. Carney stated that the idea to conduct tax seminars in the community would be something that Liberty Tax Service would like to help with. In addition, Mr. Carney stated that he would be able to distribute the bi-lingual Tax Service CDs created by Blair to the Hispanic community during the seminars.

Laura Barrett stated that the Commission knows many community activists where the Commission could access these people in order to create an audience for these tax seminars.

Mr. VanDevender stated that a good way to communicate to the Hispanic community is through the churches. In addition, it would be wise to create a project report where the Committee can start working on items which are depicted on the list.

Mr. VanDevender stated that the DOR will be looking to acquire bi-lingual tax payer service representatives.